

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Macerich – Santa Monica Place

Licensee of Station WQCI991
Santa Monica, California

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File Number: EB-06-LA-086

NAL/Acct. No.: 200632900011
FRN: 0011720653

FORFEITURE ORDER

Adopted: March 26, 2007

Released: March 28, 2007

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of three thousand, two hundred dollars (\$3,200) to Macerich – Santa Monica Place (“Macerich”), licensee of land mobile station WQCI991, for willful and repeated violation of Section 1.903(a) of the Commission’s Rules (“Rules”).¹ On May 31, 2006, the Enforcement Bureau’s Los Angeles Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$4,000 to Macerich after determining that Macerich apparently willfully and repeatedly operated on 461.0125 MHz, a frequency not authorized by the WQCI991 license in Santa Monica, California.² In this *Order*, we consider Macerich’s arguments that the violation was not willful; that Macerich has a history of compliance with the Commission’s Rules; and that Macerich has since ensured that its operation was in compliance with the Rules.

II. BACKGROUND

2. On February 13, 2006, the Los Angeles Office received an interference complaint concerning Macerich’s allegedly unauthorized repeater station operating on 461.0125 MHz in Santa Monica, California. A review of the Commission’s databases revealed no authorization for any station to operate on 461.0125 MHz in that area.

3. On March 27, 2006, and April 4, 2006, an agent from the Los Angeles Office used mobile direction finding techniques to locate radio-repeater transmissions on 461.0125 MHz to the Santa Monica Place shopping mall in Santa Monica, California. After locating the repeater station on April 4, 2006, the Los Angeles agent interviewed the Security Manager for Macerich who stated that the repeater transmitting on 461.0125 MHz had been in operation for over a year and produced a copy of Macerich’s license for WQCI991. The license authorized Macerich to operate on other UHF band frequencies but not on 461.0125 MHz.³ The Los Angeles agent informed the Security Manager that the current license

¹ 47 C.F.R. § 1.903(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632900011 (Enf. Bur., Western Region, Los Angeles Office, released May 31, 2006).

³ A previous license, KNEN676, issued to the Santa Monica Place management company, SMPL Management, Inc.,

did not authorize the use of the 461.0125 MHz repeater and the Security Manager stated that he would immediately stop using that frequency.

4. On May 31, 2006, the Los Angeles Office issued a *NAL* in the amount of \$4,000 to Macerich. In the *NAL*, the Los Angeles Office found that Macerich apparently willfully and repeatedly operated on 461.0125 MHz, a frequency not authorized by the WCI991 license. Macerich filed a response to the *NAL* on June 7, 2006 (“*Response*”). In its *Response*, Macerich argues that it did not willfully violate the Rules, that it has a history of compliance with the Commission’s Rules, that it took steps to ensure that it came into compliance with Rules after the inspection by the Los Angeles agent and, consequently, the *NAL* should be cancelled.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

6. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service, and with a valid authorization granted by the Commission.⁸ On March 27, 2006, and April 4, 2006, a Los Angeles agent determined that Macerich was operating its land mobile station, WQCI991 on 461.0125 MHz, a frequency not authorized by its license.

7. In its *Response*, Macerich acknowledges that it operated WQCI991 on 461.0125 MHz. Macerich states that its prior license KNEN676, authorized the use of 461.0125 MHz and Macerich did not realize that the frequencies it was authorized to use had been changed. Consequently, Macerich states that it had no “willful or malicious intents” to violate the Rules or to operate WQCI991 on an unauthorized frequency. A licensee is required to operate on the frequency stated in its authorization.⁹ Section 312(f)(1) of the Act,¹⁰ which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized

authorized the use of 461.0125 MHz and other frequencies. This license was cancelled, however, on December 7, 2003.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 1.903(a).

⁹ *Dominic DeNaples*, 19 FCC Rcd 12303 (EB 2004).

¹⁰ 47 U.S.C. § 312(f)(1)

by this Act....”¹¹ While we appreciate that Macerich may not have kept track of its FCC applications and authorizations, its Security Manager acknowledged to the Los Angeles agent that it was operating its station, WQCI991, on 461.0125 MHz, a frequency not authorized on the WQCI991 license. Pursuant to Section 312(f)(1), this action alone is enough to show that Macerich willfully violated Section 1.903(a); Macerich’s actual intent is irrelevant.¹² Consequently, we find that Macerich willfully violated Section 1.903(a) of the Rules. In any event, Macerich operated on the incorrect frequency for more than a year, therefore, its violation was repeated.

8. Macerich also contends that it has never previously had compliance issues with the Commission and, consequently, it has a history of overall compliance with the Commission’s Rules. We have reviewed our records and we concur. Consequently, we reduce Macerich’s forfeiture amount from \$4,000 to \$3,200.

9. Macerich also argues that it ensured that its operation of WQCI991 came into compliance after the inspection by the Los Angeles agent. While we appreciate Macerich’s efforts, the Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee’s attention and that such correction is not grounds for a downward adjustment in the forfeiture.¹³ Therefore, we find no merit to this argument.

10. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Macerich willfully and repeatedly violated Section 1.903(a) of the Rules. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$3,200 is warranted.

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Macerich – Santa Monica Place **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,200 for willfully and repeatedly violating Section 1.903(a) of the Rules.¹⁴

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire

¹¹ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹² We also note, as the Los Angeles Office did in the *NAL*, that the KNEN676 license was cancelled on December 7, 2003. *NAL* at n.3. The WQCI991 license was granted to Macerich on March 16, 2005.

¹³ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

¹⁴ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.903(a).

¹⁵ 47 U.S.C. § 504(a).

transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Macerich – Santa Monica Place, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁶ See 47 C.F.R. § 1.1914.